IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 4769 of 2007()

CRIME NO.185/07 OF PULPALLY POLICE STATION
CMP.931/2007 of DISTRICT COURT, KALPETTA

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PETITIONER/4TH ACCUSED:

UMMER, S/O. HAMZA HAJI,
CHALITHODI HOUSE, KOILERI P.O., PAYYAMPALLY,
MANANTHAVADY TALUK, WYNAD.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:
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1. THE SUB INSPECTOR OF POLICE,
PULPALLY POLICE STATION.

2. STATE, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4769 of 2007

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Dated this the 23rd day of August, 2007

O R D E R

How inadequate and deficient the structures and procedures for investigation in the Kerala Police are to meet the challenge posted by organised crime syndicates is clearly revealed in the case diary in this crime. Nay, what is more disturbing to the judicial mind is the want of seriousness and earnestness in the pursuit of criminals when they belong to such organised crime syndicates. It is the unfortunate experience of this Court to observe that in the implementation and enforcement of the Abkari law, a will to prevent the crime and to burst higher links is unfortunately lacking. A small operator or carrier, who is found in possession of few ml. of arrack is gone after, but bigger fish operating at a larger scale are not touched and no serious effort is at all made to bust the racket so that small operators will not have the opportunity at all to conduct such activity. Lack of individual, administration, political and societal will to tackle the situation is very evident. Cosmetic responses once in a way is not going to help the situation at all.

2. Coming to the brasstack, a lorry carrying 8540 litres of spirit concealed in it was found abandoned in a god forsaken place within the jurisdiction of Pulpally police station at the wee hours on 29.6.2007. The Circle Inspector of Police got information about this. He went to the scene. He effected the seizure. He promptly registered a crime. What happened thereafter is surprising and shocking. Instead of himself conducting the investigation or the investigation being left to a superior or specialised agency, he conveniently left it to the local S.I. to conduct the investigation. The investigation limped through.

3. We are today on 23.8.2007. Even now the police is left clueless. They have no clue of the crime whatsoever. Where was the consignment brought from? Who had sent the consignment? What was the destination? Who was the consignee? Who and in what manner was it intended to be used? Through which route, through which check post did the consignment enter the State? The police are still groping in the dark. They suspected five persons. Four of them have not been arrested so far. The petitioner/A4 was arrested on 13.7.2007. He continues in custody. He is the petitioner in this application.

4. Dissatisfied with the investigation, the Prosecutor was requested to explain. Statement of the local Sub Inspector, who conducted the investigation, was filed. When the court expressed its unhappiness, the Director General of Prosecutions himself has started appearing in the case. A statement of the Circle Inspector has also been filed.

5. In a case like this immediate efficient action is certainly required. The persons who transported the consignment have got to be identified. The number shown in the vehicle is a fake one. It is not the real one. The number shown is a number of a two wheeler registered in Tamil Nadu. Any reasonably prudent mind must then try to ascertain the engine number and chassis number. That has been done. The chassis number is tampered with. The engine number is genuine and it has not been tampered with. Any person with a sense of expedition must immediately attempt to identify the person to whom this engine number was sold. Even till this day no worthwhile effort was made in this direction also. After the D.G.P. entered appearance, the case diary has been made up to date. It is seen that as late as on 16.8.07 efforts have been made to ascertain the person to whom the engine with this number has been sold by writing a letter to the manufacturer! The Investigating Officer is optimistically waiting for the reply from the manufacturer.

6. Less said about the investigation, the better. What shocks me to note is that the police have no method of tackling with a case of this dimension. To a pointed query, it is stated that there is no method by which such a serious crime like this can be referred promptly to a superior official of the police or a specialised agency. The local S.I. has to go on with the investigation. The Circle Inspector of Police, who had detected the crime has conveniently left it to the Sub Inspector to conduct the investigation. Why did he do so? The only explanation is that because he detected the case, it is only proper to get the investigation conducted by the Sub Inspector.

7. The learned D.G.P. undertakes that the needful shall be done to ensure that a proper investigation is conducted and a senior official is entrusted with the investigation. But in every case it is not necessary or proper courts to make observations to ensure that proper investigation is conducted. It is certainly the duty of all concerned, the Director General of Prosecutions and senior officials of the police included, to make sure that a proper investigation by an expert agency is conducted in every such case, where the violation complained of is of such dimension as in this case. I assume that the learned D.G.P. will ensure, as undertaken by him, that a proper investigation is done by superior officials of the police.

8. Coming to the facts of this case, the only allegation against the petitioner is, as I can decipher from a detailed perusal of the case diary, is that the petitioner had on that night (wee hours of the morning) taken some persons to a local lodge. He had taken a room in his name, where those persons were accommodated. It is the hypothesis of the police that those persons who were accommodated in the room were the ones who are responsible for the carriage of the consignment. They suspect that the 5th accused, one Suresh, a local person does also have contumacious involvement in such transportation. The police are not yet able to say how and under what circumstance the lorry with the consignment happened to be there at the spot of the detection of the crime.

9. The learned counsel for the petitioner submits that the petitioner, who has remained in custody from 13.7.07, may now be enlarged on bail as even allegedly his role is limited to the above extent. The argument appears to be very impressive at the first blush, but on a consideration of all the relevant inputs, the conclusion appears to be inevitable that the petitioner is not co-operating with the investigators. He is not revealing all the matters to the police. A pointed questioning of this accused has not been undertaken at all.

10. A reading of the case diary shows that there are several loose ends which the investigator has not strained to sort out. In as much as the investigation is not complete at all and the police is continuing with the investigation and in as much as the petitioner is not obviously co-operating fully with the investigators, I am of the opinion that the petitioner's prayer for regular bail at this early stage of investigation has got to be turned down.

11. This application is accordingly dismissed. Needless to say, the petitioner shall be at liberty to move the court for bail again at a later stage of the investigation, not at any rate, prior to 6.9.2007. The Investigators shall, in the meantime, make every endeavour to complete the investigation by then. The undertaking of the learned D.G.P. that the investigation shall be entrusted to expert specialised hands must also be followed up with appropriate action. Call on 7.9.2007 for report of the learned D.G.P. of the steps taken for the proper investigation of the crime.

12. Hand over the order to the learned Prosecutor.

(R. BASANT)
Judge

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